

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 MYRNA SANDOVAL,

15 Defendant.
16

Case No. 6:21-po-234-HBK-1

ORDER PERMITTING GOVERNMENT TO
AMEND VIOLATION, RECALLING
WARRANT AND RESETTING INITIAL
APPEARANCE

(Doc. No. 1)

17 This matter comes before the Court upon *pro se* Defendant's request to place this matter
18 back on the Court's calendar. *See docket* entry dated June 25, 2021. Defendant was issued a
19 Notice of Violation (No. F- 5200233) for failing to pay a recreation fee on or about January 24,
20 2021 in violation of 36 C.F. R. § 261.17. (Doc. No. 1). According to the Statement of Probable
21 Cause in support of the violation, Defendant's vehicle was found parked and unattended without a
22 displayed permit at the Highway 108 Sno-Park, located in Stanislaus National Forest. (*Id.*). On
23 April 16, 2021, a Notice to Appear was mailed to Defendant setting this matter for an Initial
24 Appearance on May 3, 2021. (*See docket* entry dated May 3, 2021; Doc. No. 2). Defendant
25 failed to appear at the Initial Appearance and a warrant issued consistent with Fed. R. Crim. P.
26 58(d)(3). (*See docket* entry dated May 24, 2021; Doc. No. 3).

27 A review of the Notice of Violation reveals it failed to advise Defendant whether the
28 offense required a Mandatory Appearance or permitted collateral to be posted and forfeited in lieu

1 of appearance. (*See generally* Doc. No. 1.) According to the 2021 Collateral Forfeiture
2 Schedule, a “[f]ailure to pay any recreation fee is prohibited” and is subject to a fine of “\$100 or
3 3x use Actual Fee, whichever is greater.” General Order No. 627; *see also* 36 C.F. R. § 261.17
4 (prohibiting the “[f]ailure to pay any recreation fee” and providing “[n]otwithstanding 18 U.S.C.
5 § 3571(e), the fine imposed for the first offense of nonpayment shall not exceed \$100.”). Thus,
6 the charged violation is not subject to a Mandatory Appearance and the violation should have
7 provided notice that Defendant could post collateral in the amount indicated for the offense (\$100
8 plus \$30 processing fee for a total amount of \$130), and consent to forfeiture of collateral in lieu
9 of appearance. Fed. R. Crim. P. 58(d)(1). Alternatively, Defendant has the right to make an
10 appearance to plead guilty or not guilty to the violation. Fed. R. Crim. P. 58(b)(3).

11 The Rules of Criminal Procedure provide that “[u]nless an additional or different offense
12 is charged or a substantial right of the defendant is prejudiced, the court may permit [a violation
13 notice] to be amended at any time before the verdict or finding.” Fed. R. Crim. P. 7(e).

14 Therefore, the Court will afford the government the opportunity to amend the violation notice.
15 In order to permit service of the amended violation on Defendant, the Court will reschedule this
16 matter for the Court’s September 14, 2021 calendar. The Court also will recall the warrant.

17 Accordingly, it is **ORDERED**:

18 1. The government may file an amended notice of violation as set forth above within
19 twenty-one (21) days of the date of this Order.

20 2. The Court resets the Initial Appearance in this matter **for September 14, 2021 at**
21 **2:00 P.M** and recalls the warrant in this case.

22
23 IT IS SO ORDERED.

24 Dated: July 6, 2021

25 
26 HELENA M. BARCH-KUCHTA
27 UNITED STATES MAGISTRATE JUDGE
28